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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Implementation of Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications Act
of 1996

CC Docket No. 96-128

RBOC/GTE/SNET Payphone Coalition
Petition for Clarification

NSD File No. L-99-34

REPLY COMMENTS OF OCMC, INC.

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OCMC, Inc. ("OCMC") replies to the comments filed in response to the Further Notice of Proposed Rulemaking ("FNPRM")¹ proposing to reinstate the amendments to the payphone compensation rules previously adopted in the *Second Reconsideration Order*.² Although OCMC agrees with the great majority of carriers filing initial comments that it would be preferable to revert to the payphone compensation scheme in effect prior to the *Second Reconsideration Order*, OCMC has no objection to the proposed amendments as long as the Commission clarifies that such amendments incorporate all of the clarifications set forth in the *Third Reconsideration Order* in this docket.³ The Commission also should reject the modifications suggested by other

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking, FCC 03-119 (rel. May 28, 2003) ("FNPRM").

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, Second Order on Reconsideration, 16 FCC Rcd 8098 (2001) ("*Second Reconsideration Order*"), remanded sub nom., *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, Third Order on Reconsideration and Order on Clarification, 16 FCC Rcd 20922 (2001) ("*Third Reconsideration Order*").

commenters, as discussed below, that would remove other parties' incentives to cooperate with the efforts of resellers such as OCMC to fulfill their payphone compensation obligations.

I. SUMMARY

Most of the facilities-based interexchange carriers ("IXCs") and switch-based telecommunications resellers filing initial comments agree with OCMC that there was no need for the amendments adopted in the *Second Reconsideration Order*. Only switch-based resellers ("SBRs") are in a position to track interexchange payphone calls that are routed by IXCs to SBRs for completion. Accordingly, most of the IXCs and SBRs agree that it would be more efficient to make SBRs directly responsible for the tracking and reporting of, and payment of payphone compensation for, payphone calls routed to and completed by SBRs.⁴ The payphone service providers ("PSPs") argue, however, that the Commission can ensure that PSPs receive their fair compensation only by reissuing the rule changes originally adopted in the *Second Reconsideration Order*, thereby making IXCs responsible for payphone compensation on calls they route to SBRs.⁵

OCMC recognizes that there may be SBRs that, unlike OCMC, are not paying the proper compensation and thus has no objection to a readoption of the rule changes adopted by the *Second Reconsideration Order* if the Commission concludes that is the only course that will ensure adequate payphone compensation for the PSPs. Because OCMC is meeting its payphone compensation obligations, however, its interests should be protected from overreaching by other parties. Accordingly, the amendments proposed in the FNPRM should be readopted only in conjunction with the clarifications previously set forth in the *Third Reconsideration Order*. Moreover, certain modifications suggested by other commenters that would reduce IXCs' and

⁴ See, e.g., Sprint Comments at 2, 13, 22-23. The initial comments filed on June 23, 2003 in response to the FNPRM by other parties will be cited in this abbreviated fashion.

⁵ See, e.g., APCC Comments at 3-4, 11.

PSPs' incentives to cooperate with SBRs' efforts to meet their payphone compensation obligations and that would impose onerous conditions on the SBRs should be rejected.

II. THE COMMISSION SHOULD REJECT PROPOSALS THAT WOULD IMPOSE ONEROUS CONDITIONS ON SWITCH-BASED RESELLERS

A. Most Of The Carriers Support OCMC's Position That The Proposed Rule Changes Are Unnecessary

Most commenting SBRs and IXC's echo OCMC's position that the proposed rule changes are unnecessary because the rules in place prior to the *Second Reconsideration Order* -- and that will apply if the proposed changes are not adopted -- sufficiently protected PSPs' rights to payphone compensation.⁶ Those carriers point out that only SBRs are in a position to track interexchange payphone calls that are routed by IXC's to SBRs for completion.⁷ Accordingly, these carriers largely agree that it would be more efficient to remove the IXC's from the payphone compensation scheme applicable to such calls by making SBRs directly responsible for the tracking and reporting of, and payment of payphone compensation for, payphone calls routed to and completed by SBRs.⁸ By designating the IXC as the responsible party, the *Second Reconsideration Order* inserted an ineffective, inefficient "middleman" into the process, which has to rely on the SBR's tracking data to pay compensation to the PSPs and then obtain reimbursement from the SBR for such compensation plus the costs of the cumbersome process

⁶ Sprint Comments at 6-7; WorldCom Comments at 4-6; IDT Comments at 4-8.

⁷ Sprint Comments at 13; AT&T Comments at 2; IDT Comments at 16-17, 27; Telstar/IPCA Comments at 7-8.

⁸ AT&T Comments at 2-3; WorldCom Comments at 27; IDT Comments at 21, 27-28; Telstar/IPCA Comments at 9-10.

brought about by the rule changes.⁹ Most of the SBRs and the IXC's favor making the SBR the responsible party and agree that the IXC's should not have to assume the role of middleman.¹⁰

Although the PSPs do not dispute that technical limitations render the IXC's unable to track the calls they route to SBRs, they argue that the obstacles they previously faced in attempting to obtain payphone compensation from unidentified SBRs necessitated the rule changes adopted in the *Second Reconsideration Order* and that PSPs can receive proper compensation only if the Commission readopts the same requirements.¹¹ As explained in its initial comments, however, OCMC has always been able to track calls routed to it and thus has always met its payphone obligations. OCMC has direct compensation arrangements with hundreds of PSPs.¹² The proposed rule changes thus are entirely unnecessary in the case of calls routed to OCMC.

OCMC recognizes, however, that the Commission may take the view that the proposed changes should be readopted to safeguard the PSPs' interests with regard to SBRs that may be unwilling or unable to track and pay compensation for calls routed to them.¹³ As stated in OCMC's initial comments, OCMC accordingly has no objection to the readoption of the proposed rules as long as the Commission reiterates the clarifications of those rules previously set forth in the *Third Reconsideration Order*. Without such clarifications, the IXC's might take advantage of their role in the payphone compensation process to impose the types of onerous

⁹ Sprint Comments at 8-10; AT&T Comments at 3-4, 7, 12-17; WilTel Comments at 4; Telstar/IPCA Comments at 5-6, 8; WorldCom Comments at 14-15.

¹⁰ Sprint Comments at 2, 5; AT&T Comments at 2, 9, 12; WilTel Comments at 1-2; IDT Comments at 15, 35-36; Telstar/IPCA Comments at 8-9.

¹¹ See, e.g., APCC Comments at 2-18.

¹² OCMC cannot explain why some of the commenters would state that there are no direct payment agreements between PSPs and SBRs. See, e.g., IDT Comments at 38; Sprint Comments at 18. OCMC can only surmise that those parties have had no dealings with OCMC as an SBR and thus are unaware of OCMC's agreements with PSPs.

¹³ See, e.g., ASCENT/Focal/US LEC Joint Comments at 4.

conditions on the SBRs that they threatened to carry out after the *Second Reconsideration Order* was issued.

B. OCMC Objects To Additional Proposals In The Initial Comments That Would Impose Onerous Conditions On SBRs

OCMC would object to reissuance of the rule changes proposed in the FNPRM if the Commission were to adopt certain clarifications and modifications proposed by some of the parties in their initial comments. The suggested modifications would either negate the clarifications previously announced in the *Third Reconsideration Order* or otherwise enable other parties to impose onerous conditions that would cause great harm to OCMC and other SBRs.

For example, Sprint requests that if the rule changes proposed in the FNPRM are readopted, IXC's should be allowed to pay compensation, and seek reimbursement from SBRs, for all calls routed to SBRs, rather than just completed calls, and that IXC's be allowed to impose their own requirements on call data submitted by SBRs.¹⁴ The *Third Reconsideration Order* rejected an IXC request to pay compensation and seek reimbursement for all calls routed to SBRs,¹⁵ and Sprint does not explain why the Commission should reconsider its decision now. Because payphone compensation is to be paid only for completed calls, payment of compensation for all calls and demands for reimbursement based on such overpayments are inconsistent with Section 276 of the Communications Act.¹⁶

Sprint attempts to justify its requests by asserting that the SBRs' inadequate cooperation in meeting the carriers' payphone compensation obligations to the PSPs has forced the IXC's to compensate PSPs for all calls routed to the SBRs.¹⁷ Contrary to Sprint's suggestion, however,

¹⁴ Sprint Comments at 24.

¹⁵ *Third Reconsideration Order*, 16 FCC Rcd at 20925.

¹⁶ *See id.* at 20924-25.

¹⁷ Sprint Comments at 8-10.

the large IXC's do not need the Commission's help in securing the SBR's cooperation in providing useful tracking data; rather, if OCMC's experience is any guide, the SBR's need protection from the overreaching of IXC's so that they cooperate with the SBR's efforts to provide IXC's with tracking data and call reports and do not impose the types of onerous conditions on SBR's that Sprint seeks. OCMC's call detail reports are accurate and timely and facilitate the IXC's fulfillment of their obligations to the PSP's.

Moreover, the underlying problem for the IXC's is not uncooperative SBR's, but, rather, that PSP's have unrealistic expectations for payphone call completion ratios. When actual call detail reports fail to meet those expectations, they incorrectly assume that they are being underpaid.¹⁸ OCMC supports Global Crossing's request that PSP's be required to give SBR/IXC completed call reports conclusive weight in the absence of evidence of fraud and WilTel's request that IXC's be authorized to rely on SBR certifications of the accuracy of their call records as a "safe harbor" in their dealings with PSP's.¹⁹ The Commission should consider other similar steps that would recognize the validity of OCMC's and other carriers' call records while protecting PSP's rights to fair compensation.

The importance of reasonable accommodations among the affected interests is underscored by WilTel's request that SBR's be required to provide call detail records of all incomplete as well as completed calls. WilTel argues that records of incomplete calls would assist IXC's in defending the lack of compensation for such calls in dealing with the PSP's.²⁰ There is no legitimate need for such an onerous expansion of the SBR's reporting responsibilities. Rather, PSP's should be required to accept the accuracy of SBR call data, barring evidence of fraud or bad faith. The expansion of the call reporting requirements

¹⁸ See Global Crossing Comments at 5.

¹⁹ *Id.* at 11-12; WilTel Comments at 5-6.

²⁰ WilTel Comments at 6-7.

requested by WilTel was rejected in the *Third Reconsideration Order*,²¹ and WilTel has shown no reason for the Commission to reconsider that decision now.

Sprint requests that IXCs be permitted to require SBRs that have direct payment agreements with some PSPs to enter into such agreements with all PSPs in order to simplify the IXCs' administrative burdens.²² This request is an illogical, burdensome imposition on SBR/PSP contracts. An SBR should not be forced to choose between having no direct payment arrangements with PSPs and having such arrangements with all PSPs originating calls carried by the SBR. Similarly, the Commission should reject the RBOC Payphone Coalition's request that PSPs and SBRs be required to secure the consent of any affected IXC to their direct payphone compensation arrangements.²³ There is no justification for giving IXCs a veto over other parties' private agreements. Such restrictions on private payphone compensation agreements "runs counter to the letter of the *Second Order on Reconsideration*, and, more generally, the spirit of the Commission's payphone compensation rules...."²⁴

A related issue is raised by certain IXCs' requests that SBRs disclose to IXCs their direct payment agreements with PSPs so that the IXCs can be assured that they will not be held responsible for payphone compensation for the calls originated from those PSPs' payphones.²⁵ The potential disclosure of OCMC's hundreds of agreements with PSPs, however, raises significant competitive issues. The Commission should not lose sight of the fact that the PSPs are OCMC's and other SBRs' customers, to whom the SBRs provide operator services. There are few matters that are more competitively sensitive than a firm's customer list. OCMC accordingly strongly urges the Commission to reject any proposals that involve the forced

²¹ *Third Reconsideration Order*, 16 FCC Rcd at 20925.

²² Sprint Comments at 24

²³ RBOC Payphone Coalition Comments at 14-15.

²⁴ *Third Reconsideration Order*, 16 FCC Rcd at 20926.

²⁵ See, e.g., WilTel Comments at 7.

disclosure of SBR/PSP contracts or the identity of the PSPs with which an SBR has signed contracts.

The IXCs will be sufficiently protected if they are authorized to rely on SBR certifications that particular calls or particular toll-free numbers are covered by direct compensation agreements with PSPs. Reliance on such SBR certifications should be a part of any safe harbor rule covering the IXCs. OCMC notes that it provides similar certifications to IXCs in analogous situations, such as the certification that it provides to an IXC that it has paid universal service charges on calls routed to it by the IXC. There is no reason that a similar certification practice could not provide the same assurance in the payphone compensation arena.

Bulletins argues that the definition of "called party" should be modified to include any destination that provides an answer supervision signal to the first switch in the call path. Under such a definition, carrier platforms that play recorded messages to subscribers would be treated as called parties, and the playing of such messages would constitute completed calls. Bulletins argues that carriers derive a benefit from the playing of such messages to subscribers and thus should compensate PSPs for such calls, even if the subscriber never dials an end user number.²⁶ Such an expanded definition, however, would appear to sweep in many attempted calls to other end users that reach an SBR network but are never completed. The end result would be roughly equivalent to IXC proposals to treat all calls routed to an SBR as completed. Bulletins' proposal thus similarly would distort the calculation of completed call volumes and is equally invalid.

Both IXCs and PSPs request permission to use timing surrogates and other proxy compensation methodologies.²⁷ Under a timing surrogate, all calls of a certain length would be treated as having been completed. As previously explained in filings by One Call Communications, Inc. ("One Call"), it often takes a minute or longer for an operator handling a

²⁶ Bulletins Comments at 19-22.

²⁷ WilTel Comments at 10-11; Global Crossing Comments at 2-8; APCC Comments at 25-28.

"0+" call to take billing information and/or to ask the called party whether he/she is willing to accept a collect call. These lengthy processes often result in incomplete calls.²⁸ Almost any timing surrogate thus will count incomplete calls as completed, thereby inflating the reported volume of completed calls and the payphone compensation that is due. The Commission rejected the use of timing surrogates as a method of determining whether a call is completed seven years ago.²⁹ No party has demonstrated any reason to resurrect that issue now.

The APCC argues that the Commission has endorsed various proxy or other approximate measures in other contexts.³⁰ All of APCC's examples, however, upheld the use of proxies because there were no alternative sources of the information at issue -- *i.e.*, "where there was data lacking."³¹ Similarly, Global Crossing argues that, because the IXC's and SBR's all say that they are unable to track calls routed to SBR's, some type of proxy methodology is the only alternative left.³² OCMC and other SBR's have made it quite clear, however, that they are able to track such calls accurately and to provide the necessary reporting. There is therefore no need or justification for such proxies.³³ APCC's examples thus do not apply. Moreover, as other commenters point out, the use of other payphone compensation proxies has been rejected

²⁸ Opposition of One Call Communications, Inc. to Petitions for Reconsideration and Petition for Declaratory Relief at 5 (Oct. 9, 2001). One Call agreed to sell its telecommunications-related assets to OCMC in early 2002, subject to Commission approval.

²⁹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, Report and Order, 11 FCC Rcd 20541, 20574 (1996) (subsequent history omitted).

³⁰ APCC Comments at 25-31.

³¹ *Id.* at 31.

³² Global Crossing Comments at 3-6.

³³ Telestar/IPCA Comments at 18-19.

repeatedly by the Commission because such methodologies would arbitrarily distort the measure of completed call volume, upon which payphone compensation is based.³⁴

Finally, OCMC supports those comments objecting to the IXCs' demands for monthly reimbursement from SBRs.³⁵ Because the IXCs pay compensation on a quarterly basis, they cannot justify demanding reimbursement for such payments on a more frequent basis. There is no reason to require that SBRs give the IXCs the use of their funds in this manner unless the IXCs are willing to pay interest on the "float."

III. CONCLUSION

OCMC does not object to the changes proposed in the FNPRM, but only if and to the extent that the changes are coupled with the clarifications announced in the *Third Reconsideration Order* and the Commission rejects other parties' proposals that would impose onerous conditions on SBRs. The conditions proposed by certain parties would make it

³⁴ IDT Comments at 13-14; Telstar/IPCA Comments at 11-19. See *Third Reconsideration Order*, 16 FCC Rcd at 20924-25.

³⁵ IDT Comments at 21-22; Telstar/IPCA Comments at 7.

impossible for SBRs to compete effectively in the operator services market and to fulfill their payphone compensation obligations.

Respectfully submitted,

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